

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1107 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MUSTUFHUSEN SAIYADMOHMAD UREZI

Versus

SAKINABIBI WD/KASAMALI                      AKBARALI

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Appearance:

MR MD PANDYA for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original plaintiff of HRP Suit No.2481/73. The aforesaid suit was filed by the plaintiff against the defendants - tenants for getting the decree for

possession of the suit premises on the ground of arrears of rent and bonafide requirement. It is the case of the plaintiff that the suit premises is situated near Delhi Darwaja, Ahmedabad. The defendant No.1 is the mother and defendant nos.2 and 3 are her sons. The suit premises was given on lease at the monthly rent at the rate of Rs.11.25 ps. The defendants had not paid the rent from 1.3.1965 and the same was not paid even after the demand notice. It is also the say of the plaintiff that the defendants have also caused damages to the suit property and that there is a change of user. The plaintiff also alleged that, he required the suit premises for his bonafide requirement. The aforesaid suit, therefore, was filed on the aforesaid grounds.

#. The defendant No.1 filed her written statement at Exh.14. The defendant nos.2 and 3 also filed their written statement at Exh.91. They denied the claim of the plaintiff for possession. It was also denied that they are in arrears of rent. They denied the claim of the plaintiff for bonafide requirement also.

#. The learned trial Judge framed various issues at Exh.45 and after recording the evidence of both the side, ultimately came to the conclusion that the requirement of the plaintiff is not bonafide. It was also found that the tenants have not committed any damages to the suit property. The trial court also found that the suit was not maintainable because the question of transmission of the tenancy is not possible after the death of the original tenant. In that view of the matter, the trial court dismissed the suit for possession.

#. The landlord had carried the matter further in appeal by way of Civil Appeal No.247/79. The aforesaid appeal was heard by the appellate bench of the Small Causes Court, Ahmedabad and the same was dismissed on 3.10.1983.

#. The original plaintiff has preferred this civil revision application challenging the order of the appellate court.

#. So far as the question about the transmission of the tenancy is concerned, the appellate court has found that the suit was maintainable and the suit notice given to the defendants was also legal and proper. However, on the ground of arrears of rent as well as on the ground of bonafide requirement, the appellate court agreed with the reasonings of the trial court while dismissing the appeal of the original plaintiff. So far as the question of bonafide requirement of the plaintiff is concerned, it

has come in the evidence that the plaintiff has retired as the Superintendent of Excise in 1973. The plaintiff has a wife, son and two daughters. At the time of deposition in the trial court, the wife of the plaintiff was found to be serving as a Professor in Gujarat College getting the salary of Rs.1500/- per month at the relevant time. It has come in the evidence that the plaintiff was residing in his own premises at the relevant time. The learned appellate Judge found that the premises in occupation of the plaintiff is bearing Survey No.501/B/3 consisting of ground floor and upper floor and there are two rooms on the ground floor and one room and varanda on the upper floor. It is also the case of the plaintiff that he has closed that varanda and converted it into a kitchen. So far as the suit premises is concerned, it consists of one room, kitchen and bath-room. The plaintiff is accordingly residing in his own house. The plaintiff was found to be in possession of 150 to 175 sq.yards of the area. While the defendant was found to be in possession of 49 sq.yards of area so far as the rented premises is concerned. It is also found by the appellate bench in para 15 of its judgment that the plaintiff and his two brothers are joint owners of very big property on Relief Road. The plaintiff and his brother erected a big house behind the shop and they have also erected upper floor over the shops and over the rear side. The said new house was completed in the year 1969-70. It is an admitted position that the fresh tenants have subsequently occupied several parts of this new house. The appellate court found that the demand of the landlord regarding the suit premises was made after newly constructed houses were given on lease to the different tenants. Upon appreciating the conduct of the plaintiff, the appellate court has come to the conclusion that the requirement of the plaintiff, therefore, cannot be said to be bonafide. The defendant No.1 is the widow residing in the suit premises. The appellate court also found that, newly constructed premises whether it is situated in the business area or not, is not relevant. It is also found that, even on the Relief Road which is the business area, there is a development to a great extent after 1970 and thereafter it is a mixed locality of business and residence. The appellate court, therefore, has considered the evidence on record in great detail and after minutely appreciating the same, has confirmed the finding of the trial court to the effect that the requirement of the plaintiff is not bonafide.

#. The aforesaid finding which is based on the appreciation of the evidence is essentially a finding of

fact. Even, otherwise it cannot be said that the appellate court has either misread the evidence or has ignored any material evidence on record. In that view of the matter, it is not possible to reach to a different conclusion than the one arrived at by the appellate court. This court is not exercising the appellate jurisdiction and its powers are restricted only for correcting an error of law while deciding the revision application under section 29(2) of the Bombay Rent Act. I, therefore, do not find any error of law in the judgment of the appellate court, and no interference of this court is required against the finding of fact reached by both the courts below insofar as not believing the bonafide requirement of the plaintiff is concerned. There is, therefore, no substance so far as the contention of the plaintiff regarding the bonafide requirement is concerned. If, the plaintiff has not proved his bonafide requirement, naturally, there is no question of considering the question of hardship. Though of course the appellate court has found that in case the plaintiff has succeeded to prove his bonafide requirement, then hardship would cause to the plaintiff if the decree is refused. However, since the plaintiff is not able to cross the first hurdle regarding proving his bonafide requirement, his suit naturally is required to be dismissed insofar as the prayer for possession on the ground of bonafide requirement is concerned.

#. So far as the question of arrears of rent is concerned, it has been found by the courts below that the case falls under section 12(3)(b) of the Bombay Rent Act as there was a dispute of the standard rent and that the tenant has deposited more rent than what was due, by depositing the rent in the court. The petitioner has not pointed out anything whether the tenants have deposited the rent regularly or not. In that view of the matter, both the courts have come to the conclusion that the tenants had deposited more rent than what was due and accordingly has given the protection under section 12(3)(b) of the Bombay Rent Act. I do not see any error in the said finding.

#. In view of what is stated above, I do not find any substance in this civil revision application and the same deserves to be dismissed. Accordingly, Civil Revision Application is dismissed. Rule discharged. No order as to costs.

(P.B.Majmudar,J.)

(pathan)

